

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION

DEMOND P. SHEPARD, #1043311

V.

DOUG DRETKE

§  
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§


CIVIL ACTION NO. G-05-340

**ORDER**

Before the Court is the Report and Recommendation of the United States Magistrate Judge, entered on June 22, 2005, which recommends that Petitioner's claim for relief from disciplinary punishment be dismissed. The Magistrate Judge recommended dismissal of the claim because the nature of Petitioner's conviction as pleaded precluded relief under the Due Process Clause. In his objections to the Report and Recommendation, however, Petitioner clarifies that he was convicted of second degree burglary, not first degree; as such, he is eligible for mandatory release and the protections afforded by the Due Process Clause.

Accordingly, after *de novo* review pursuant to 28 U.S.C. §636 (b)(1)(C), this Court **DECLINES TO ACCEPT** the Report and Recommendation and this matter is returned to Magistrate Judge for further consideration.

**DONE** at Galveston, Texas, this the 21<sup>st</sup> day of July, 2005.

  
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Samuel B. Kent  
United States District Judge